

A. S. T. Arunachalam Pillai

Vs

M/s. Southern Roadways (Private) Ltd.

Civil Appeal No. 262 of 1958

(Syed Jafar Imam, A. K. Sarkar, K. Subha Rao JJ)

29.04.1960

JUDGMENT

IMAM, J. -

This appeal is on a certificate granted by the Madras High Court as in its opinion it involved a substantial question of law to the effect "whether the delegation to the Regional Transport Officer of the power to vary the conditions of a permit is valid". The appellant is the proprietor of Sri Vinayagar Transports, Woriyur, Tiruchirapalli. He held a permit to ply his bus on the route Tiruchirapalli Mainguard Gate to Tiruchirapalli Railway Station via Palakarai and Round Tana. He applied on July 19, 1954, to the Regional Transport Officer, Tiruchirapalli, for variation of the route so as to ply his bus between Mainguard Gate and Golden Rock via Palakarai, Round Tana, Tiruchirapalli Railway Station and retrace again to Round Tana and thence to Golden Rock. The Regional Transport Officer notified this application for variation and called for objections. The appellant's application and the objections thereon were heard on July 15, 1955, but the Regional Transport Officer rejected the application. The appellant filed a Revision Petition before the Government of Madras under s. 64A of the Motor Vehicles Act, hereinafter called the Act, s. 64A having been introduced into that Act by the Legislature of the State of Madras. The Madras Government after having heard objections to the Revision Petition, by its order dated December 28, 1955, set aside the order of the Regional Transport Officer and directed the grant of the variation in the permit of the appellant as prayed for by him. Against the order of the Madras Government the respondent, the Southern Roadways (Private) Ltd., hereinafter called the respondent, filed a petition under Art. 226 of the Constitution in the Madras High Court on January 2, 1956, for the issue of a writ of certiorari to quash the order of the Government of Madras.

When the petition came up for hearing before Rajagopalan, J., the respondent raised a plea which was not taken in the petition under Art. 226 of the Constitution to the effect that the Regional Transport Officer had no jurisdiction to grant the variation asked for by the appellant and the Government had likewise no jurisdiction to grant, in revision, what the Regional Transport Officer himself could not have granted. This plea was made on account of a Division Bench decision of the Madras High Court in Writ Appeal No. 107 of 1955, arrived at since the filing of the petition, wherein it was held that the Regional Transport Officer had no jurisdiction to deal with an application for variation of the conditions of a permit. Rajagopalan, J., following the decision in Writ Appeal No. 107 of 1955 held that the Regional Transport Officer had no jurisdiction to deal with the appellant's application for variation and that it followed that the Government of Madras had equally no jurisdiction to grant the variation on a revision petition filed against the order of the Regional Transport Officer. The learned Judge accordingly set aside the order of the Government of Madras dated December 28, 1955, without going into the other contentions raised by the respondent

in its petition under Art. 226. The appellant appealed against the decision of Rajagopalan, J. Although in the appeal the correctness of the decision in Writ Appeal No. 107 of 1955 was questioned it was not pressed because of the decision of the Full Bench of the Madras High Court in Writ Appeals Nos. 56 and 57 of 1956 decided on April 12, 1957. The argument in the present case therefore proceeded on the footing that the Regional Transport Officer, Tiruchirapalli, had no jurisdiction to deal with the appellant's application for variation.

In the High Court on behalf of the appellant it was urged that the respondents had submitted to the jurisdiction of the Regional Transport Officer and therefore could not at a later stage obtain the discretionary writ of certiorari on the ground that there was lack of jurisdiction. It was next contended that even if the Regional Transport Officer had no jurisdiction to deal with the appellant's application for variation the order of the Government of Madras which was sought to be quashed could not be said to be one passed without jurisdiction or in excess of jurisdiction because the Government had undoubtedly power to pass the order in question under s. 64A of the Act. Both these contentions were rejected and the decision of Rajagopalan, J., was affirmed. The High Court, however, granted a certificate that the case was a fit one for appeal to this Court.

The principal question for consideration in this appeal is whether the Regional Transport Officer had the power to vary the conditions of a permit to ply a stage carriage. In order to decide that question some sections of the Act, as amended by the Legislature of the State of Madras, will require consideration, particularly the provisions of s. 44A. But before we proceed to do that the other two questions which were decided against the appellant by the High Court may first be considered.

In our opinion, although the respondent had submitted to the jurisdiction of the Regional Transport Officer and had not in his petition under Art. 226 in the High Court taken the objection that that officer had no jurisdiction to vary the conditions of a permit, the High Court acted rightly in allowing the respondent to urge that the Regional Transport Officer had no jurisdiction to vary the conditions of a permit. It was not until the decision of the High Court in Writ Appeal No. 107 of 1955 that it became the considered view of that Court that the Regional Transport Officer had no jurisdiction to make any such variation. When the law was so declared by the High Court it could not reasonably be said that the High Court erred in allowing the respondent to take this point although in its petition under Art. 226 the point had not been taken. This was obviously because the decision of the High Court in Writ Appeal No. 107 of 1955 had not been given at the time of the filing of the petition. Since the question went to the root of the matter and it involved the question whether the Regional Transport Officer had jurisdiction to vary the conditions of a permit the High Court, faced with a Division Bench decision of its own on the matter, could not very well refuse permission to the respondent to rely on that decision in support of its petition questioning the validity of the order of the Government of Madras made under s. 64A of the Act.

It had been strongly urged in this Court on behalf of the appellant that on a proper construction of s. 64A of the Act there was ample power in the Government of Madras to make an order directing the variation sought in the conditions of the permit of the appellant, even though the Regional Transport Officer had no jurisdiction to do so. Section 64A empowered the Government of Madras to pass such orders as it thought fit with respect to any order passed or proceedings taken under Chapter IV of the Act by any authority or officer subordinate to it for the purpose of satisfying itself of the legality, regularity or propriety of the order or proceeding, when it had called for the records of the case. In our opinion, s. 64A is a power vested in the State Government by way of revision of orders passed under Chapter IV of the Act by any authority or officer subordinate to it. This is not a power

which the State Government could exercise by way of original jurisdiction which was vested elsewhere. In our opinion, although the words "may pass such order in reference thereto as it thinks fit" are wide in expression, they do not mean that the State Government could pass an order in exercise of revisional jurisdiction which the authority whose order the Government was revising had no jurisdiction to pass. The State Government could undoubtedly set aside an order of an authority or officer subordinate to it who had no jurisdiction to pass the order in question under Chapter IV but it could not substitute for that order its own order directing the variation in the conditions of the permit of the appellant. It is significant that s. 43 which deals with the power of the State Government to control Road Transport does not mention that such a Government has the power to vary the conditions of a permit, although the various powers conferred by that section are fully specified, including the power to vary the notification issued under the section. If the Act had intended to give the power to the State Government to vary the conditions of a stage carriage permit granted to a particular person it would have specified such a power in this section. The authority which is empowered to vary the conditions of a permit is stated in s. 48A which certainly is not the State Government. Under the Act, therefore, no such authority was vested in the State Government and the words in s. 64A "as it thinks fit" must mean within the ambit of the provisions of the Act.

Coming now to the question whether the Regional Transport Officer had the power to vary the conditions of the permit of the appellant it would be necessary to construe s. 44A of the Act. Before we proceed to do so, reference to certain sections of the Act and the Rules framed thereunder would be necessary as well as certain relevant facts. Section 42 prohibits the owner of a transport vehicle to use or permit its use, save in accordance with the conditions of a permit granted or counter-signed by a Regional or Provincial Transport Authority. Reference to s. 43 has already been made which deals with the power of the State Government to control road transport. Section 43A empowers the State Government to issue such orders and directions of a general character as it may consider necessary in respect of any matter relating to road transport to the State Transport Authority or Regional Transport Authority and such Authority shall give effect to all such orders and directions. Section 44 empowers the State Government by notification in the Official Gazette to constitute a State Transport Authority and Regional Transport Authorities, the former to exercise and discharge the functions specified in sub-s. (3) and the latter to exercise powers as may be specified in the notification in respect of each Regional Transport Authority. Section 44A which is incorporated by the Madras Amending Act reads :

"The State Government may appoint a State Transport Commissioner and notwithstanding anything contained in this Act, may, by notification in the Fort St. George Gazette, authorize such Commissioner or any officer subordinate to him, to exercise and discharge in lieu of any other authority prescribed by or under this Act such powers and functions as may be specified in the notification".

Section 45 deals with applications for a permit and directs that they shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle. Section 46 states the matters which shall be stated in the application for a permit. Section 47 provides the procedure to be observed by a Regional Transport Authority in considering applications for stage carriage permits. Section 48 empowers a Regional Transport Authority to restrict the number of stage carriers for which permits may be granted in the region or in any specified area or on any specified route within the region and to impose conditions on such permits. One of these conditions is contained in cl. (d)(ii-a) which is to the effect that stage carriage or stage carriages shall be used only on specified routes or in a specified area. Section 48A provides for the alteration of the conditions attached to a permit and reads :

"Any conditions attached to a stage carriage permit in pursuance of cl. (d) of s. 48 may at any time be varied, cancelled or added to by the State Transport Authority, provided that this power shall not be exercised to the prejudice of the holder of the permit without giving not less than three months' notice to him".

Section 133A(1) authorises the State Government for the purpose of carrying into effect the provisions of the Act to establish a Motor Vehicles Department and to appoint as officers thereof such persons as it thinks fit. Sub-s. (3) authorises the State Government to make rules to regulate the discharge by officers of the Motor Vehicles Department of their function and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under the Act) to be exercised by them and the conditions governing the exercise of such powers. No rules, in fact, had been framed.

It will be seen from what has been stated that it is the State Transport Authority and no other which is authorised under s. 48A to vary the conditions of a permit of a stage carriage. Section 44A, however, authorise the State Government to appoint a State Transport Commissioner. It further provides that notwithstanding anything contained in the Act the State Government may by notification authorise the State Transport Commissioner or any officer subordinate to him to exercise and discharge in lieu of any other authority prescribed by or under the Act such powers and functions as may be specified in the notification. By this section, although under s. 48A it is the State Transport Authority which can vary the conditions of a stage carriage permit, the State Government could, notwithstanding the provisions of that section, authorise the State Transport Commissioner to exercise such powers in lieu of the State Transport Authority. It could also confer such power on an officer subordinate to the State Transport Commissioner. The vital question for determination is, how are the words "any officer subordinate to him" to be construed. In construing these words the provisions of s. 133A will have to be kept in mind as it was contended on behalf of the respondent that these sections should be read together. It was urged on behalf of the respondent that under s. 133A(3) as to who was subordinate to whom in the Motor Vehicles Department had to be prescribed by rules. As no rules had been framed it could not be said that the Regional Transport Officer was subordinate to the State Transport Commissioner.

The Full Bench of the Madras High Court in the case of T. Krishnaswamy Mudaliar v. P. S. Palani Pillai (A.I.R. 1957 Mad. 599) had occasion to consider whether a Regional Transport Officer was subordinate to the State Transport Commissioner for the purposes of the Act. Three views were pressed before it. The first view, which was favoured by a Division Bench of that Court, was to the effect that the word 'subordinate' in s. 44A meant "administrative subordination". The second view was pressed by the Advocate-General of Madras who had urged that the word 'subordinate' in the section meant "functional subordination" and the third view was pressed by Mr. Nambiar to the effect that the word 'subordinate' meant "statutory subordination". It was the third view which was accepted by the Full Bench and the High Court expressed its opinion in the following words :-

"Of the three views placed before us we are inclined to prefer the third. It appears to us to be the most rational and the most free from objections. It is in accord with all well established rules of interpretation of Statutes. It does not require as the theory of 'functional subordination' seems to require, the introduction of new words into the section. It has the merit of being more flexible of powers not merely at the State level but at the regional level also. It ensures that there will be no transfer or delegation of powers except to officers whose subordination has been determined by rules properly

framed under the Act. It also ought to avoid the anomaly that has now occurred of a person in the position of a Secretary of a body being empowered to vary the condition of a permit granted by that body. We therefore adopt this view."

The High Court in rejecting the view submitted by the Advocate-General observed that there were no qualifying words whatever to the word 'subordinate' in s. 44A.

The Full Bench decision of the Andhra Pradesh High Court in the case of B. Veeraswamy v. State of Andhra Pradesh (A.I.R. 1959 And. Pradesh 413) did not agree with the Full Bench decision of the Madras High Court. The Andhra Pradesh High Court was of the opinion that the Regional Transport Officer was an officer subordinate to the Transport Commissioner within the meaning of s. 44A of the Act. It laid emphasis on the word "any" and observed that that word excluded limitation or qualification and connoted wide generality. It comprehended not only the officer whose subordination was statutorily determined, but all eligible subordinate officers and therefore the Regional Transport Officer came within the ambit of the expression "any officer subordinate" used in s. 44A. Having examined the reasons given in the decisions of the Full Bench of the Madras High Court and the Full Bench of the Andhra Pradesh High Court we are generally in agreement with the view taken by the Andhra Pradesh High Court for the reasons which we now proceed to state.

We have not on the record any material to show when the Madras Government appointed a State Transport Commissioner nor have we any notification in the Fort St. George Gazette as to what powers he or an officer subordinate to him was authorized to exercise and discharge in lieu of any other authority prescribed by or under the Act. The Madras Road Traffic Code of 1940 shows that on May 21, 1947, the Governor of Madras constituted a Provincial Transport Authority for the Province (now the State) of Madras, a Regional Transport Authority for the district and city of Madras and a Regional Transport Authority for each of the other districts in the Province (now the State) of Madras. This Code also contains the Madras Motor Vehicles Rules, 1940, hereinafter called the Rules. The Rules came into force on April 1, 1940. Under Rule 3(c) "Central Road Traffic Board" or "Central Board" means the Provincial Transport Authority constituted for the State of Madras under sub-s. (1) of s. 44 of the Act. This definition obviously must have been inserted in the Rules after the constitution of the Provincial Transport Authority in the year 1947. This definition was again altered on December 20, 1955, and for the words "Central Road Traffic Board" or "Central Board" the words "State Transport Authority" was substituted. On the same date a further definition was added to the Rules by the insertion of cl. (m) in Rule 3 which was to the effect that "Transport Department" means the Motor Vehicles Department set up under s. 133A of the Act. The Government of Madras issued a Notification No. G.O. MS. 527 on February 14, 1953, wherein it was stated that prior to the decision of the Madras High Court in Writ Petition No. 806 of 1951 the Regional Transport Authorities were varying whenever necessary all the conditions of the permits, but according to the decision of the High Court in that petition the Regional Transport Authorities could not vary the existing conditions of a stage carriage permit imposed under s. 48(d) of the Act and that it was only the State Transport Authority which could do so under s. 48A of the Act. The decision of the High Court resulted in great administrative inconvenience as all applications for variation of conditions of permit would have now to be made to the State Transport Authority which involved delay and inconvenience to operators. It further stated that the Government of India had under consideration a proposal to amend s. 48 of the Act so as to empower the Regional Transport Authorities to vary all conditions of permits, but some time would be taken to carry out the necessary legislation. Pending the legislation the Government of Madras had decided to empower Regional Transport Officers, as a temporary measure, to vary conditions of permits now dealt with by the State Transport Authority. The notification further went on to say that

in exercise of the powers conferred by s. 44A of the Act the Governor of Madras authorized the Regional Transport Officers and the Secretary, Road Traffic Board, Madras, to exercise the powers and discharge the functions of the State Transport Authority under ss. 48A, 51A and 56A of the Act. On October 20, 1955, the Government of Madras issued a further notification reorganizing the Motor Transport Department with reference to the Motor Vehicles (Madras Amendment) Act, 1944 (Act XXXIX of 1944). According to this notification a Member of the Board of Revenue should be appointed as Transport Commissioner under s. 44A of the Act and the present post of Transport Commissioner should be abolished; that an officer of the Transport Department should be appointed as State Transport Authority who will also be the Assistant Transport Commissioner; that the post of Secretary, Central Road Traffic Board, should be redesignated as Secretary, State Transport Authority; that Collectors of districts in the mofussil and the Commissioner of Police in the City of Madras should be appointed as Regional Transport Authorities under s. 44 of the Act; that the Regional Transport Officers in the mofussil and the Deputy Commissioner of Police (Traffic & Licensing) in the Madras City should be the Secretaries to the Regional Transport Authorities and that an officer of the grade of a District Judge should be appellate authority prescribed under s. 64(1) of the Act, as amended, to deal with appeals against the orders of the Regional Transport Authorities and be designated as the State Transport Appellate Tribunal. Under cl. (2) of the notification the Member of the Board of Revenue to be appointed as Transport Commissioner would be the Head of the Transport Department and would have general responsibility for administration of the Act. He would be empowered by the Government under s. 44A to exercise the powers now exercised by the State Transport Authority under sub-ss. 3(a) and (c) and (4) of s. 44 of the Act. In the discharge of these functions the Transport Commissioner will have administrative control over the organisation at present working under the Transport Commissioner. Under cl. (4)(ii) the powers under ss. 48A, 51A and 56A of the Act to alter the conditions of stage carriage permits, contract carriage permits and public carriers permits, exercised by the Regional Transport Officers, would hereafter be exercised by the Regional Transport Authorities. Under cl. 5(i) the Regional Transport Officer would be the Secretary to the Regional Transport Authority and in that capacity he would assist the Regional Transport Authority in the performance of the functions prescribed in cl. (4). It is, however, to be remembered that when on July 19, 1954, the appellant applied to the Regional Transport Authority for the variation of the conditions of his permit, the Notification No. G.O. MS. 527 dated February 14, 1953, of the Government of Madras was in force by virtue of which Regional Transport Officers were authorised to discharge the functions of the State Transport Authority under ss. 48A, 51A and 56A of the Act.

In paragraph 6 of the statement of the case filed by the respondent it was stated that in the exercise of the powers conferred under s. 44(1) of the Act the Government of Madras constituted Provincial and Regional Transport Authorities. It also set up a Motor Transport Department with a Transport Commissioner as its head and officers in that Department, in the lower scale, were the Regional Transport Officers who functioned as the Secretaries of the respective Regional Transport Authorities called the Road Traffic Board. It was further stated in paragraph 7 that although a Regional Transport Officer was a subordinate of the Transport Commissioner on the administrative side he could not be held to be a subordinate officer within the meaning of s. 44A. The State Government may establish a Motor Vehicles Department and appoint officers thereto under s. 133A, but mere appointment of officers in that Department could not invest them with statutory functions to be discharged under the Act and under the Rules. Section 133A contemplates framing of rules to regulate the discharge by officers of the department of their functions as also to state the authorities to whom such officers shall be subordinate and the duties to be performed by them. It was not suggested that any duties or powers of a statutory nature had been vested in the Transport

Commissioner; nor was there any rule showing that the Regional Transport Officer is a subordinate of the Transport Commissioner for the purposes of the Rules. The statement of the case further stated that s. 44A required a functional subordination and not merely an administrative one.

The Madras Financial Code, Vol. II, Appendix I, shows the list of Heads of Departments of the Government of Madras. The Transport Commissioner is shown as the Head of a Department. The Half-Yearly List of Gazetted Officers in the Transport Department corrected upto the 31st of July, 1955, shows that the Transport Commissioner is also the Chairman, Central Road Traffic Board, Madras, and subordinate to him are the Secretary, Central Road Traffic Board, Madras, Assistant Secretary, Road Traffic Board, Madras and Regional Transport Officers. There can be no question therefore that the Regional Transport Officers are officers subordinate to the Transport Commissioner. It is perhaps for this reason that the respondent admits that the Regional Transport Officers, administratively, are subordinate to the Transport Commissioner. Section 44A speaks merely of an officer subordinate to the Transport Commissioner to whom by notification the Government of Madras may confer the authority in lieu of any other authority prescribed by or under the Act to discharge the powers and functions of that authority. It was, however, argued that until rules were framed under s. 133A specifying as to who is subordinate to which authority for the purposes of the Act and the statutory functions to be performed under the Act, administrative subordination is not what is contemplated under s. 44A. On the other hand, on behalf of the appellant it has been urged that effect must be given to the words of s. 44A which did not in the least indicate in what way the officer has to be subordinate to the Transport Commissioner. It was worthy of notice that s. 44A authorized the State Government, notwithstanding anything contained in the Act, to authorize any officer subordinate to the Transport Commissioner to exercise and discharge in lieu of any other authority such powers and functions as may be exercised by that authority. The section did not depend upon any rules to be framed under s. 133A. Furthermore, s. 133A was an enabling section by which a State Government could, if it so wished, for the purpose of carrying into effect the purposes of the Act establish a Motor Vehicles Department. Until such a Department was established the question of framing rules under the section did not arise.

There is no clear material on the record or in the Madras Road Traffic Code from which it can be ascertained precisely as to when the Madras Government established a Motor Vehicles Department. It is significant, however, by a notification dated December 20, 1955, cl. (m) was added to Rule 3 of the Rules and this stated that "Transport Department" means the Motor Vehicles Department set up under s. 133A of the Act. Apparently, until this date Transport Department was something other than the Motor Vehicles Department set up under s. 133A of the Act. It is clear, therefore, that on February 14, 1953, when the Notification G.O. MS. No. 527 was issued by the Government of Madras the Regional Transport Officers were officers subordinate to the Transport Commissioner. Even if at some time or the other a Motor Vehicles Department had been set up by the Government of Madras admittedly the Government of Madras had framed no rules under s. 133A(3). If rules had been framed under that section and they showed that the Regional Transport Officers were not subordinate to the Transport Commissioner then a question might well have arisen as to how the words "any Officer subordinate to him" should be construed owing to a conflict between the Regional Transport officer being administratively subordinate to the Transport Commissioner and yet not subordinate to him by virtue of the rules framed under s. 133A. Since, however, no rules have been framed under this section, so far as s. 44A is concerned, any officer who is subordinate to the Transport Commissioner in any way must include the Regional Transport Officers in the Transport Department. The words of the section are wide enough for this interpretation and they are incapable of being given the restricted meaning suggested on behalf of the respondent. It was, however, suggested that anomalies may occur if s. 44A is construed so widely, because a Regional

Transport Officer was a Secretary of a Regional Transport Authority and therefore subordinate to that authority and yet he could be empowered to vary the conditions of a permit which the State Transport Authority, to which the Regional Transport Authority is subordinate, may have declined to do. In the matter of interpretation such considerations cannot be of much assistance. If the words of s. 44A are wide enough to mean any officer subordinate to the Transport Commissioner they must be given effect to. In the matter of interpretation a Court could not, if the words were plain enough, proceed on the basis that possibly the Government of Madras may misuse its powers.

We accordingly hold that the Regional Transport Officer, Tiruchirapalli, had jurisdiction to vary the conditions of a permit by virtue of the power conferred on him by the Notification No. G.O. MS. 527 issued by the Government of Madras. Consequently, that Government had the power under s. 64A to do that which the Regional Transport Officer could have done but had refused to do.

In our opinion, the appeal must be allowed and the judgments of the single Judge and Appellate Court of the High Court must be set aside and the case remanded to the High Court for the rehearing of the writ petition by the single Judge as several questions which were raised in that petition have not been decided by him. He had allowed the petition solely on the ground that the decision of the Government of Madras must be set aside as the Regional Transport Officer had no jurisdiction to vary the conditions of the permit and that being so the Government of Madras could not make such an order in the exercise of its revisional jurisdiction. The case will accordingly go back to the single Judge for decision on the other points raised in the writ petition filed by the respondent.

The appellant is entitled to his costs of this appeal.

The costs in the High Court will abide the result.

SUBBA RAO, J. ❖

I have had the advantage of perusing the judgment of my learned brother, Imam, J. I regret my inability to agree with him in regard to the main question raised in the case, namely, whether the Regional Transport Officer is subordinate to the State Transport Commissioner within the meaning of s. 44A of the Motor Vehicles Act, 1939 (4 of 1939) (hereinafter referred to as the Act). The facts are fully stated by my learned brother and it is not necessary to restate them here.

Section 44A was inserted in the Act by the Madras Act 20 of 1948 and it reads :

"The State Government may appoint a State Transport Commissioner, and notwithstanding anything contained in this Act, may, by notification in the Fort St. George Gazette, authorize such Commissioner or any officer subordinate to him, to exercise and discharge in lieu of any other authority prescribed by or under this Act, such powers and functions as may be specified in the notification."

This section empowers the State Government to appoint only a State Transport Commissioner and does not confer any power on it to appoint any officer subordinate to him; that power must be found elsewhere in the Act or the rules made thereunder. This section also does not enable the State Government to confer any powers on or entrust any functions to, the said Commissioner other than those exercisable by any authority under the Act. On the interpretation of this provision there is a conflict of views between the full bench decision of the Madras High Court in T. Krishnaswamy Mudaliar v. P. S. Palani Pillai (A.I.R. 1957 Mad. 599) and the full bench decision of the Andhra

Pradesh High Court in *B. Veeraswamy v. State of Andhra Pradesh* (A.I.R. 1959 A.P. 413). In the former case, Balakrishna Ayyar, J., delivering the judgment of the Court, summarized his views thus at p. 602 :

"Of the three views placed before us we are inclined to prefer the third (statutory subordination). It appears to us to be the most rational and the most free from objections. It is in accord with all well established rules of interpretation of Statutes. It does not require as the theory of "functional subordination" seems to require, the introduction of new words into the section. It has the merit of being more flexible and practical since it permits of the transport or delegation of powers not merely at the State level but at the regional level also.

It ensures that there will be no transport or delegation of powers except to officers whose subordinate has been determined by rules properly framed under the Act. It also ought to avoid the anomaly that has now occurred of a person in the position of a secretary of a body being empowered to vary the condition of a permit granted by that body. We therefore adopt this view."

On the other hand, Satyanarayana Raju, J., speaking for the full bench of the Andhra Pradesh High Court, in the latter case summarizes his views thus at p. 416 :

"The Regional Transport Officer is an individual who is invested with the authority and is required to perform the duties incidental to an office and is therefore an officer. In the performance of his various duties, he is subject to the direction and control of the Transport Commissioner. He is thus an officer subordinate to the Transport Commissioner."

The question is which of the two views is correct. It falls to be decided on the provisions of the Act and the rules framed thereunder. The Act was passed to consolidate and amend the law relating to motor vehicles. It deals with a variety of subject relating to motor vehicles, such as licensing of drivers (Ch. II), registration of motor vehicles (Ch. III), control of transport vehicles (Ch. IV), construction, equipment and maintenance of motor vehicles (Ch. V), control of traffic (Ch. VI), motor vehicles temporarily leaving or visiting India (Ch. VII), insurance of motor vehicles against third party risks (Ch. VIII), offences, penalties, and procedure (Ch. IX), and miscellaneous (Ch. X). Each chapter, with the exception of Ch. X, provides for a particular aspect relating to motor vehicles and is, within its range, self-contained, and contains a separate provision conferring power on the Government to make rules for the purpose of carrying into effect the provisions of that chapter. Section 133A of the chapter dealing with miscellaneous matters enables the Government, for the purpose of carrying into effect the provisions of the Act, to establish a motor vehicles department, to appoint officers to the said department, to make rules, inter alia, to regulate their functions and duties and name the authorities to whom they shall be subordinate. In short, the Act is comprehensive and self-contained; the powers and duties of the various authorities and their relationship inter se are all laid down and regulated by the provisions of the Act and the rules made thereunder.

With this background let us look at the relevant provisions of ch. IV of the Act and the rules made thereunder. Chapter IV deals with "Control of Transport Vehicles". Under s. 42, no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of a permit. Section 43 confers power on the State Government to control road transport. Section 43A which was inserted in the Act by Act 20 of 1948 enables the Government to

issue administrative directions to Transport Authorities created under the Act. Section 44 empowers the State Government to constitute for the State a State Transport Authority and Regional Transport Authorities for different regions to exercise and discharge throughout their respective areas the powers and functions specified in the Act. Section 44A, which was inserted by Madras Act 20 of 1948, further empowers the State Government to appoint a State Transport Commissioner and by notification authorize him or any officer subordinate to him to exercise and discharge in lieu of any other authority prescribed by or under the Act such powers and functions as may be specified in the notification. The duties and functions of this Authority and its subordinate are confined only to notified statutory functions and duties imposed on other Authorities under this Act in whose place they are appointed. Sections 45 to 56 lay down the procedure to be followed by the Regional Transport Authority in issuing permits in respect of stage, contract, private and public carriages and also confer powers on the said Transport Authority to vary, cancel all or any of the conditions attached to such permits. Section 58 deals with the duration and renewal of permits and s. 59 gives the statutory conditions attached to a permit. Section 60 enables the Transport Authority which granted a permit to cancel or to suspend it on any of the grounds mentioned therein. Section 64 confers a right of appeal on an aggrieved party to prefer an appeal against an order of the State or Regional Transport Authority within the prescribed time to the prescribed Authority in respect of matters mentioned therein. Section 64A gives revisional jurisdiction to the State Government to call for the records of any order passed by any Authority or officer subordinate to it for the purpose of satisfying itself as to the legality, regularity or propriety of such order. Section 68 confers on the State Government power to make rules for the purpose of carrying into effect the provisions of this chapter; and under sub-s. (2)(a) thereof the State Government is authorized to make rules in respect of the period of appointment and the terms of appointment of and the conduct of business by Regional and State Transport Authorities and the reports to be furnished by them.

This chapter, therefore, follows the same pattern adopted in the Act. It creates Authorities, defines their powers and duties, and provides for the regulation of their relationship inter se.

In exercise of the powers conferred under s. 44, the State Government constituted in the State a State Transport Authority and also Regional Transport Authorities and appointed members to the said bodies. The constitution of the said bodies was changed from time to time. At the crucial period, i.e., on July 19, 1954, the State Transport Authority was described as the Central Road Traffic Board (C.R.T.B) and its Chairman was the State Transport Commissioner. So too, the State Government appointed Regional Transport Authorities, described as Boards, and from time to time changed their composition. During the period in question the Regional Transport Authorities consisted of District Magistrate, District Superintendent of Police, the President, District Board, and one non-official person to be nominated by the Government.

It also appears from the judgment of Krishnaswamy Naidu, J., who referred the question to the full bench of the Madras High Court, that the State Government established a Motor Vehicles Department under s. 133A of the Act and appointed Regional Transport Officers. Their powers are regulated by the rules made under the Act. Under r. 124, the Regional Transport Officer is made the Secretary and executive officer of the Board, i.e., the Regional Transport Authority. Rules 131, 134, 134B and 135 define the duties to be performed by the Secretary. Rule 134A enables the Board, for the prompt and convenient discharge of business, to delegate to the Secretary functions described under that rule. Rule 134A authorizes the Board to give general instructions as to the manner in which the Secretary shall exercise the powers delegated to him. Under r. 147, appeals lie to the Central Board against particular orders of the Secretary and the Board. These rules positively establish that the Regional Transport Officer is subordinate to the Board, i.e., the Regional Transport

Authority. He has statutory duties and functions and in discharge of those duties he is under the control of the Board and in the matter of some quasi-judicial duties an appeal lies to the Central Road Traffic Board. It is, therefore, manifest that the regional Transport Officer is appointed by the Government in exercise of its powers under s. 133A of the Act, that his duties are statutorily defined and that under the rules he is made subordinate to the Board, i.e., the Regional Transport Authority.

Now coming to the State Transport Commissioner, the State Government is authorized to appoint him under s. 44A of the Act, which was inserted in the year 1948. He is also a statutory authority. Both the parties proceeded on the basis that the State Government established a Motor Vehicles Department and the Commissioner was one of its officers. The division bench of the Madras High Court which referred the question to the full bench also accepted the fact that the Madras Government created a Motor Vehicles Department under s. 133A of the Act and the Commissioner is an officer of that Department. The full bench of the Andhra Pradesh High Court also founded its conclusion on the fact that "the Transport Commissioner is constituted the head of the department of transport which is the Motor Vehicles Department". That apart, cl. (m) which was inserted in r. 3 on December 20, 1955, clarifies the position by enacting that the Transport Department is the Motor Vehicles Department set up under s. 133A of the Act. It is, therefore, clear that the State has created a Motor Vehicles Department and appointed the Commissioner as an officer in that Department. Neither s. 44 nor s. 133A makes any officer subordinate to the said Commissioner. Section 44 only enables the State Government to confer on him powers and duties and functions entrusted to any Authority under the Act. No notification issued by the Government authorizing the Commissioner to discharge any of the functions specified in the Act has been placed before us. No rule has been framed under sub-s. (3) of s. 133A of the Act making the Regional Transport Authority subordinate to the State Transport Commissioner. The only material available to us is that the Commissioner was appointed by the State Government as Chairman of the Central Road Traffic Board. Under the Act and the rules framed thereunder, there are certain statutory duties and functions allotted to the Central Road Traffic Board, but no separate powers are conferred on the Chairman of the Board apart from his being a part of the Board. It is, therefore, clear that under the Act and the rules framed thereunder the Regional Transport Officer is not made subordinate to the State Transport Commissioner.

But what is contended is that though between the Commissioner and the Regional Transport Officer, there is no statutory subordination, the latter was made by the Government administratively subordinate to the Commissioner. There is no order of the Government making the Regional Transport Officer a subordinate to the Commissioner placed before us. The only material is a notification issued by the Government dated October 20, 1955, on which reliance is placed to indicate that the Regional Transport Officer is subordinate to the Commissioner. But obviously it has no relevance to the present enquiry, for the notification was issued on a date subsequent to the date of the impugned order. If there was an earlier notification, the State or the appellant would have produced it, but from its non-production it may be assumed that there was no such notification. If that is excluded, the only two remaining documents are, (i) The Madras Financial Code giving a list of the heads of departments of the Madras State, and (ii) the Half-Yearly List of Gazetted Officers in the Madras State Government. The former shows the Transport Commissioner as one of the heads of departments. It does not in itself show that the Regional Transport Officer is his subordinate. The mere mention of the Regional Transport Officers in the list of Gazetted Officers in the department is not decisive of the fact that they are subordinate to the Transport Commissioner. In this state of record, it is not possible to hold that even administratively the Regional Transport Officer is subordinate to the State Transport Commissioner.

I shall assume for the purpose of this case that the Regional Transport officer is treated by the Government as a subordinate Officer to the Commissioner. The question in this case is whether such administrative treatment in utter disregard of the statutory provisions can confer upon the Regional Transport Officer a right to function under s. 44A of the Act.

The foregoing provisions relevant to the present enquiry may be summarised thus : The Act is a self-contained one. Under specific provisions it empowers the Government to constitute a State Transport Authority, the Regional Transport Authorities and a State Transport Commissioner. Section 44A does not authorize the Government to appoint subordinate officers to the Commissioner, but only enables it to confer statutory powers on an officer subordinate to the Commissioner. In exercise of the powers conferred under s. 133A of the Act, the State Government created a Motor Vehicles Department and appointed in that Department a Commissioner, Regional Transport officers and others. But the State Government has not made any rules making the Regional Transport officer a subordinate to the Commissioner. Indeed, the rules made him the executive officer of the Regional Transport Board indicating thereby that he is a subordinate to the Board. It is, therefore, manifest that either under the Statute or under the rules made thereunder the Regional Transport Officer is not subordinate to the Commissioner.

Learned Attorney-General contends that s. 133A of the Act only confers a discretionary power on the State Government to make rules indicating the authorities to which the officers appointed shall be subordinate and, therefore, it is not bound to do so. Assuming that the word "may" in the section confers a discretionary power on the State Government, is it permissible to contend that the Government is entitled to do administratively what it is empowered to do by rules ? If the Government decides not to exercise the powers conferred under sub-s. (3) of s. 133A, it may withhold from doing so; but it cannot bring about the same result administratively, i.e., by a process other than by way of rules. If the contention were accepted, it would be attributing to the legislature an intention to make an unnecessary provision. If the State Government could act administratively in regard to matters covered by sub-s. (3), why should the said sub-section be made at all ? Either by making rules or without making rules, the Government can achieve the same object. There is an understandable reason for the legislative preference to a statutory rule. Statutory rules are placed before Parliament for its approval, while administrative regulations are entirely in the discretion of the executive government. Statutory authorities under the Act are empowered to exercise powers affecting valuable rights of citizens. The power to issue permits and modify the conditions thereof affects large interests and it may well be that the legislature in insisting upon statutory rules seeks to exercise supervision to prevent abuse of powers. The only reasonable construction of s. 133A is that the State can create subordination of one officer to another by only statutory rules and not otherwise. I would, therefore, hold that if the Government seeks to make a particular officer of the Department subordinate to another, it can only do so by making a statutory rule under sub-s. (3) of s. 133A of the Act.

The result is that negatively there is no statutory rule making the Regional Transport Officer subordinate to the State Transport Commissioner, and positively there is a rule making him subordinate to the Regional Transport Authority (R.T.A.). If that be so, I must hold that the Regional Transport officer is not a subordinate to the State Transport Commissioner within the meaning of s. 44A of the Act.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

Order of Court.

In view of the majority judgment of the Court, the appeal is allowed with costs in this Court, and the case remanded to the High Court for a re-hearing by a single Judge. Costs in the High Court will abide the result.

Appeal allowed.

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